

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review)	
)	
Donna Public Library)	File Nos. SLD-289464, 319218,
Donna, Texas)	320003, 324301, 324627
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 9, 2004**Released: April 12, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Donna Public Library, Donna, Texas, seeks review of two April 24, 2002 decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) regarding SLD application numbers 320003 and 324627.¹ On September 27, 2002, Donna Public Library appealed the decisions to SLD.² SLD denied the appeal because Donna Public Library filed the appeal more than 60 days after the decision was rendered.³ We affirm SLD's decision. For a review of decisions by SLD issued on or after August 13, 2001, appeals must be filed within 60 days of the issuance of the SLD decision date.⁴ Here, Donna

¹ Letter from Bruce Kalter, Donna Public Library, to Federal Communications Commission, filed October 18, 2002 (Request for Review). *See also* Letter from the School and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated April 24, 2002 (regarding SLD application number 320003); Letter from the School and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated April 24, 2002 (regarding SLD application number 324627). Any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² *See* Letter from Bruce Kalter, Donna Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed September 27, 2002 (Request for Administrator's Review).

³ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated October 1, 2002 (regarding SLD application number 320003); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated October 1, 2002 (regarding SLD application number 324627).

⁴ 47 C.F.R. § 54.720(b). *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 339 (Com. Car. Bur. rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

Public Library filed its appeal with SLD after the 60-day period, in contravention of our rules. We therefore deny the Request for Review regarding application numbers 320003 and 324627.

2. Donna Public Library also requests review of SLD's decision regarding application number 289464. Our review of the record reveals that Donna Public Library attempted to file the FCC Form 471 for SLD application number 289464 on-line but failed to complete the process. In addition to the incomplete application, the record reveals that Donna Public Library also failed to submit a certification for this application. We therefore deny the Request for Review regarding SLD application number 289464.

3. To the extent that Donna Public Library seeks a waiver of our rules in this instance, we deny its request.⁵ Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule.⁶ Donna Public Library explains only that "the School" did not inform it of the change in the discount rate which caused it to miss the 60-day deadline.⁷ We find that these particular facts do not create the special circumstances warranting a waiver of the Commission's rules.⁸ In light of the thousands of applications that SLD must review and process each year, it is administratively necessary to require an applicant to be responsible for meeting deadlines. Further, we have consistently held that it is the applicant who has responsibility ultimately for the timely submission of its appeals.⁹ Applicants must comply with program rules and procedures in order to be eligible for discounts.

4. Finally, Donna Public Library seeks Commission review of SLD's decisions regarding application numbers 319218 and 324301.¹⁰ Specifically, Donna Public Library asks

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ Request for Review. Although it is unclear from Donna Public Library's Letter, it appears that Donna Public Library is referring to the school district in which it is located and a change in the number of students eligible for the federal free or reduced lunch program. Generally, libraries obtain their discount rate from the school district in which the library is located. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 at 17 (November 2001) (FCC Form 471 Instructions). The Commission's rules direct libraries to calculate their discounts by determining poverty and high-cost status, and selecting the appropriate discount rate from the matrix. 47 C.F.R. § 54.505(b) and (c).

⁸ See, e.g., *Request for Waiver by Duncanville Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-272355, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 11863 (Wireline Comp. Bur. 2002) (The Applicant bears the responsibility of completing the relevant forms and submitting them within the established deadline.)

⁹ See, e.g., *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21,521 (2003); *Request for Waiver by Center City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-3256719, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22424 (2003).

¹⁰ Request for Review. Prior to filing this appeal with the Commission, Donna Public Library also filed an appeal of the same decisions with the Administrator. See Request for Administrator Review. On April 10, 2003, the Administrator denied Donna Public Library's appeal regarding these applications, because it requested funding

the Commission to reconsider its request for a discount rate adjustment.¹¹ Donna Public Library states only that the school district raised its discount rate from 88% to 90%, and therefore, Donna Public Library's discount rate should be increased to 90% as well.¹² We do not agree. Our review of the record reveals that Donna Public Library did not file a Form 471 reflecting the increased discount percentage, or funding amount, before the close of the filing window deadline. Funding requests must be submitted prior to the close of the filing window deadline in order to be considered.¹³ An applicant may not increase its funding request after filing its Form 471, unless it submits a new application prior to the close of the filing window deadline.¹⁴ Donna Public Library's request contravenes this policy.¹⁵ If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.¹⁶ This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.¹⁷ Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.¹⁸

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review filed by Donna Public Library, Donna, Texas, on October 18, 2002, and the request to waive the 60-day time limit in which to file an appeal regarding SLD application numbers 320003 and 324627, ARE DENIED.

6. IT IS FURTHERED ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a),

amounts and discount rates that were not included on its Form 471. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated April 10, 2003, regarding SLD application number 319218; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Kalter, Donna Public Library, dated April 10, 2003, regarding SLD application number 324301.

¹¹ *See* Request for Review.

¹² *Id.*

¹³ *See* 47 C.F.R. § 54.504.

¹⁴ *See* FCC Form 471 Instructions at 8.

¹⁵ *See Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 23,820 (Com. Car. Bur. 2003).

¹⁶ *See Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Docket Nos. 96-45 and 97-21, Order, DA 01-351 (Com. Car. Bur. rel. February 13, 2001) at para. 6.

¹⁷ *Id.*

¹⁸ *Id.*

that the Request for Review filed by Donna Public Library, Donna, Texas on October 18, 2002, regarding SLD application number 289464, IS DENIED.

7. IT IS FURTHERED ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Donna Public Library, Donna, Texas on October 18, 2002, regarding SLD application numbers 319218 and 324301, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau